

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 25

LCDT 010/19

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**CANTERBURY WESTLAND
STANDARDS COMMITTEE (No 1)**
Applicant

AND

PHILLIP NIGEL ALLAN
Practitioner

CHAIR

Judge B J Kendall

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr S Morris

Ms G Phipps

Mr K Raureti

DATE OF HEARING 15 August 2019

HELD AT District Court, Christchurch

DATE OF DECISION 13 September 2019

COUNSEL

Mr J Shaw and Mr T McGuigan for the Standards Committee

Mr G Knight for the Practitioner

RESERVED REASONS OF THE TRIBUNAL FOR DECISION RE LIABILITY

Introduction

[1] The applicant filed seven charges against Mr Allan each of which was framed as the three alternatives of misconduct, unsatisfactory conduct, or negligence/incompetence in his professional capacity.

[2] The charges and particulars are annexed as Appendix 1.

[3] Mr Allan admitted unsatisfactory conduct in respect of charges 2, 3, 4, and 6. He denied charges 1, 5 and 7.

[4] The Committee relied primarily upon s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (Act) (wilful or reckless breaches) to prove misconduct in respect of each charge.

[5] At the end of the hearing, we recorded that Mr Allan's conduct in respect of charges 2 – 6 was unsatisfactory. We dismissed charges 1 and 7.

[6] This decision records the reasons for the findings we have made.

The Charges

[7] The charges are summarised in the opening submissions of the Committee as follows:

The Canterbury Westland Standards Committee (No 1) (the Committee) has filed seven charges, in each instance framed as the three alternatives of misconduct, unsatisfactory conduct, or negligence/incompetence in a professional capacity.

The seven charges are particularised as follows:

(a) Charge 1 – O complaint:

- (i) Breach of r 3.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the CCCR) – responding to inquiries from the client in a timely manner.
- (ii) Breach of r 7.1 of the CCCR – taking reasonable steps to ensure the client understands the nature of the retainer and keeping the client informed about progress.
- (iii) Breach of r 7.2 of the CCCR – promptly answering requests for information or other inquiries from the client.

(b) Charge 2 – failure to respond to O complaint:

- (i) Breach of r 10 of the CCCR – maintain proper standards of professionalism in the lawyer's dealings; and or
- (ii) Breach of r 11 of the CCCR – practice be administered in a manner that ensures the reputation of the legal profession is preserved.

(c) Charge 3 – Z complaint:

- (i) Breach of r 4.4.1 of the CCCR – to act upon any written request to uplift documents without undue delay.

(d) Charge 4 – failure to respond to Z complaint:

- (i) Breach of r 10 of the CCCR – maintain proper standards of professionalism in the lawyer's dealings; and or
- (ii) Breach of r 11 of the CCCR – practice be administered in a manner that ensures the reputation of the legal profession is preserved.

- (e) Charge 5 – J complaint:
- (i) Breach of r 3 of the CCCR – to act competently, in a timely manner and to take reasonable care.
 - (ii) Breach of r 3.2 of CCCR – responding to inquiries from the client in a timely manner.
 - (iii) Breach of r 7.1 of the CCCR – taking reasonable steps to ensure the client understands the nature of the retainer and keeping the client informed about progress.
 - (iv) Breach of r 7.2 of the CCCR – promptly answering requests for information or other inquiries from the client.
 - (v) Breach of r 7.6 of the CCCR – completion of matter and the need to identify any necessary future action by the client or the lawyer.
- (f) Charge 6 – C complaint:
- (i) Breach of r 4.4.1 of the CCCR – to act upon any written request to uplift documents without undue delay.
- (g) Charge 7 – W matter:
- (i) Breach of r 3 of the CCCR – act competently, in a timely manner and take reasonable care.
 - (ii) Breach of r 13 of the CCCR – overriding duty of a lawyer acting in litigation is to the Court.
 - (iii) Breach of r 13.1 of the CCCR – a lawyer must not mislead the Court; and/or
 - (iv) Breach of r 13.2 of the CCCR – a lawyer must not act in a way that undermines the processes of the Court or the dignity of the Judiciary.

Background

[8] The charges arise out Mr Allan's conduct over the years 2013 to 2018 when he was assigned counsel under the Legal Services Act 2011.

Charge 1 – O complaint

[9] Mr Allan was assigned to act for Ms O in 2017 in respect of charges laid against her in the District Court. She complained that Mr Allan failed to respond to her text messages and telephone calls between October 2017 and 5 December 2017. The Committee further alleged that between 14 December 2017 and 4 April 2018 Mr Allan continued to be unresponsive, difficult to contact and provided little information to Ms O about the progress of her Court cases.

[10] The Committee alleges that Mr Allan's conduct complained of was in breach of rr 3.2, 7.1 and 7.2 of the CCCR and that he acted wilfully or recklessly in breach of those rules.

[11] Ms O did not give evidence in support of the charge.

[12] Mr Allan denied the charge. He said that he was first assigned to represent Ms O on 11 August 2017. He met her and discussed the charges. She failed to appear in court on 22 August 2017 and a bench warrant was issued. He then arranged for her to appear voluntarily on 29 August 2017 at which time a case review hearing was set for 13 November 2017. That date was changed to 14 November 2017. Mr Allan said that he made sure that Ms O understood what the next steps would be and that he advised her of the changed date. He said that the court also advised her of the changed date.

[13] Mr Allan said that he was asked to travel to Niue at short notice as part of a free legal assistance programme operated there by New Zealand lawyers. He said that he briefed Carol Morgan, barrister, to attend for him at the case review hearing and that she was fully briefed and was supplied with Ms O's contact details. Ms O failed to appear at the case review hearing and a bench warrant was issued.

[14] On 16 November 2017 Ms O was arrested again and fresh criminal charges were laid against her. Mr Allan was assigned to those charges by Legal Aid on 27 November 2017.

[15] Having received Ms O's complaint of 13 November from the Law society, Mr Allan said that he first checked with Mr Ellis of the Law Society that it was proper to discuss matters with her. He discussed the matters with her prior to her scheduled appearance in court on 14 December 2017. She gave him written instructions to continue acting for her which he said led him to believe that her complaint had been resolved. He assumed (wrongly he said) that the complaint would be resolved and so provided only a brief explanation to the Law Society as to where matters stood.

[16] Mr Allan set out the following actions he carried out for his client:

- (a) Court appearances with her on 2 February 2018, 19 February 2018, 8 and 29 May 2018;
- (b) Discussions with judges and explanations to Ms O of her options and the risks involved;
- (c) Variation of bail conditions to ensure that she had a stable address and was able to meet conditions;
- (d) Helped to arrange a Housing New Zealand house for her;
- (e) Held regular meetings with her during that period.

[17] Ms O failed to attend at sentencing on 28 August 2018, and a bench warrant was again issued.

[18] Mr Allan further said that subsequently concerns were expressed about Ms O's mental health. He supported the seeking of a s 38 report. That report diagnosed her to be suffering from a range of overlapping conditions. She was treated at Hillmorton Hospital. Mr Allan said that he continued to act for her. Sentencing finally took place on 22 January 2019 when a term of intensive supervision was imposed. His Legal Aid assignment ended then.

[19] We find that Mr Allan had made adequate arrangements for Ms O's representation in court on 14 November 2017 which were communicated to her. His evidence as to continuing contact with his client satisfies us that he acted responsibly and professionally for his client. There is strength in the submission of his Counsel the complaints of Ms O arose out of her state of mind, rather than from any failing on the part of Mr Allan.

[20] We accordingly concluded that this charge was not proved and dismissed it.

Charge 2 – Failure to respond to the O complaint

[21] Mr Allan accepted that this complaint was justified and accepted the facts as set out in the Charges document (See Appendix 1).

[22] Mr Allan made the following points in support of a finding of unsatisfactory conduct:

- (a) He had regarded Ms O's confirming instructions as a withdrawal of her complaint;
- (b) He was not made aware of Ms O's second complaint of April 2018 until 12 June 2018.
- (c) He attended the Standards Committee meeting on 4 July 2018, provided a written response to that meeting, and discussed the complaints. He accepted that the Standards Committee regarded that as an insufficient response and that he could have made a more substantial response had he been aware of the extent of his client's mental problems;
- (d) That he had continued to work diligently for his client having achieved good outcomes for her.

[23] Mr Allan's counsel submitted that his inadequate response to the complaints was due in large part to his inability to deal with such matters, because of the depression from which he was suffering. His failure was not wilful or reckless. This submission is also relevant to the admissions that Mr Allan has made in respect of charges 3, 4 and 6.

[24] The evidence from Mr Allan is that he was under medical treatment for depression through the Riccarton clinic from 2011 to 2018 where he was treated with a number of SSRI medications. He described himself as being in a swimming pool sometimes under water and sometimes on top but unable to see to the end of it. While outside the pool everyone continued on as if what was happening to him was normal. He said that while he was generally able to cope with his day-to-day workload, he struggled with the extra work pressures that came from such matters as complaints. He said that his condition gave rise to communication difficulties and described feelings that suggested that at times he was overwhelmed with all he had to deal with. He acknowledged support from colleagues and said that some members of the judiciary were aware that he was struggling and went out of their way to show him kindness. He was grateful for the courtesy that was shown him.

[25] Counsel for the Committee acknowledged that Mr Allan was going through a difficult time. He submitted that, nevertheless, account had to be taken of the cumulative picture created by the matters admitted and occurring in the period 2017 to 2018.

[26] We find that we can take account of Mr Allan's depressive condition during the relevant period. There are well known barriers to people with mental health conditions seeking help. Mr Allan's uncontested evidence was that he had shown insight and professionalism in recognising he was unwell, he had sought help from his doctor and confided in colleagues. There is no evidence that the Committee phoned or took other steps to facilitate his putting in a response or accessing supports available through the Law Society. That led us to conclude that his admitted conduct in respect of charges 2, 3, 4 and 6 is unsatisfactory rather than wilful or reckless.

Charge 5 – J complaint

[27] Mr Allan (acting under a Civil Legal Aid grant) successfully represented M J in proceedings before the High Court. The claim against her was dismissed by Panckhurst J in a judgment dated 19 September 2013. Costs were reserved. The allegation is that in the months following release of the judgment, Ms J and her partner Mr R made several attempts to contact Mr Allan including attending on his chambers without any substantive response from him.

[28] Mr R made enquiries with the High Court in June 2015 and became aware that no costs decision had been made. Mander J subsequently made a costs order.

[29] The Committee further alleges that Mr Allan failed to organise a deed of assignment over the costs award having been requested to do so.

[30] The Committee alleges the following breaches against Mr Allan being:

- (a) Failure to advance the issue of costs in a timely manner;
- (b) Failure to respond to Ms J in a timely manner and promptly answering requests for information or other inquiries from his client;
- (c) Failure to provide Legal Aid with documentation that was requested to approve the charge over Ms J's property; and
- (d) Failure to take reasonable steps to ensure that Ms J understood the retainer and informing her about progress.

[31] The Committee's submission was that the alleged breaches constituted conduct that was wilful or reckless, thus amounting to misconduct within the meaning of the Act.

[32] The evidence is that Mr Allan filed submissions regarding costs on 8 October 2013 which was less than a month following the release of the judgment of Panckhurst J. We find that to be timely.

[33] The question becomes whether or not Mr Allan should have followed up with the High Court to ensure that a costs decision was made and to then communicate with Ms J.

[34] Mr Allan acknowledged that he did not do so. He did with candour say that, had he himself followed up with the Court over the costs, he could have possibly obtained an earlier decision on costs.

[35] We find that, while it is not the role of counsel to pursue the Court for the decision on costs, circumstances may dictate that a discreet enquiry should be

made. We find that to be the case in this matter. An earlier enquiry and communication of the result would have saved Mr Allan from making his decision to curtail communication with Ms J and Mr R. We do not find his conduct to be wilful or reckless. It is unsatisfactory.

[36] As to the allegation that Mr Allan failed to provide Legal Aid with an assignment of the costs claim, Mr Allan explained that there was disagreement between himself, Ms J and Mr R as what costs could be assigned beyond the Legal Aid Costs. That issue could not be resolved. Mr Allan, with the agreement of Ms J and Mr R, returned the file to his instructing solicitor, Mr Persson, along with the assignment document for him to attend to enforcement of costs. That occurred two years ago. He acknowledged that he should have notified Legal Aid that he had done so.

[37] There is disagreement between what Mr Allan says occurred and the accounts given by Ms J and Mr R. Given that Mr Allan has acknowledged his failures to follow up the decision on costs and that there were failures to communicate, it is unnecessary to determine whose account is to be preferred.

[38] We find that Mr Allan did not fail to provide Legal Aid with an assignment of the costs claim. He was unable to get the document completed. Rather, his failure on this aspect of the charge is that he failed to inform Legal Aid of the position. To that extent we find his conduct to be unsatisfactory.

Charge 7 – W matter

[39] In this matter, Mr Allan was representing Mr W on Legal Aid. He was in custody facing 12 charges, eight of which were for offences that occurred in Christchurch. The other four charges were for offences that took place in Dunedin. Mr Allan had been assigned in respect of the Christchurch offences. Ms Baird of Dunedin had been assigned in respect of the Dunedin offences. A sentence indication hearing for all matters was set down for 20 August 2018 in the Christchurch District Court. Ms Baird had agreed that Mr Allan should appear on all matters and had asked Legal Aid to assign the Dunedin matters to him.

[40] Mr Allan filed a memorandum on the morning of the hearing in which he indicated that he was not contesting the submissions filed by the Crown on behalf of the Police.

[41] The matter came before Judge Couch who declined to give a sentence indication. The Judge said that he declined to do because of the absence of submissions from Mr Allan with the result that he had not prepared the matter for a sentence indication.¹ The matter was adjourned to the later date of 21 August 2018.

[42] What followed was that Judge Couch issued a memorandum on 20 August 2018 in which he was critical of Mr Allan's conduct before him that day.² He mentioned that Mr Allan was not assigned on all matters and had failed to advise the Court that no submissions were to be filed. The Judge was critical of Mr Allan for not having followed up with Legal Aid the assignment to him of the Dunedin matters. The Judge directed that copies of his memorandum be sent to Mr Allan, the Legal Services Agency and the Canterbury/Westland Branch of the New Zealand Law Society.

[43] Arising out of those events, the applicant has charged Mr Allan with breaches of the following Rules of the CCCR namely:

- (a) Rule 3 which requires a lawyer to act competently, in timely manner and to take reasonable care;
- (b) Rule 13, which provides that the overriding duty of a lawyer acting in litigation is to the Court concerned;
- (c) Rule 12.1, which provides that a lawyer must not mislead the Court; and/or
- (d) Rule 13.2, which provides that a lawyer must not act in a way that undermines the processes of the Court or the dignity of the Judiciary.

[44] Mr Allan's responded to the charge by saying that to the best of his recollection he simply advised Judge Callaghan on 29 July 2018 that he was acting

¹ Exhibit "F" to affidavit of Phillip Nigel Allan sworn 7 June 2019.

² BoD at pages 170 and 171.

for Mr W and did not make any representation as to whether he was assigned on Legal Aid.

[45] His response to the criticism of lack of submission for the 20 August 2018 hearing was that the Crown had provided full submissions which he regarded as fair. He had the summaries of facts for all charges and Mr W's previous convictions and was therefore in possession of all the information needed for the sentence indication hearing. He had given Mr W advice and was instructed not to oppose the Crown's submissions.

[46] He disagreed with Judge Couch's contention that he was not able to represent Mr W in respect of the Dunedin charges. He said that he had clear instructions and authority to appear. Mr Allan went on to say that it was strictly irrelevant whether or not Legal Aid had reassigned him to those matters at the time. Had reassignment not occurred, then he would have done the work without fee which not infrequently is required of counsel.

[47] Mr Allan also said that the delay in the sentencing indication hearing did not result in Mr W spending extra time in custody for the reason that, had an indication been given on the day, Mr W would have remained in custody during the sentencing process with the balance of the prison term to be served after sentencing which is what in fact happened.

[48] Mr Allan disagreed with the contention that the late filing of submissions meant that the sentencing indication could not proceed. He made the following points

- (a) The Judge made no allowance for the fact that the Crown's submissions had been filed late;
- (b) The Judge had decided not to read the Crown's submissions and prepare for the hearing in the absence of a submission from him;
- (c) That it is not uncommon for defence counsel not to file a written submission where the prosecution submissions are accepted by them;

(d) That a sentencing indication was arranged through another Judge and that Mr W accepted that sentencing indication.

[a] He arranged for the Christchurch charges to be withdrawn and for one of the Dunedin charges to be withdrawn. The resulting sentence was a 20 month term of imprisonment, such that he considered that issues around the 20 August 2018 hearing had no adverse effect on Mr W's result.

[49] The submission made for Mr Allan was that Mr W had instructed him to act on the charges from Christchurch and Dunedin; that detailed discussion about all the charges took place and that Mr Allan was fully entitled to hold himself out as acting for Mr W on all charges.

[50] Mr Knight made the following submissions:

- (a) It is common for defence counsel to find themselves in the position of having been assigned on Legal Aid for some charges, but not yet assigned on other charges;
- (b) Some counsel advise the presiding judge that they are not yet assigned on the latter charges, and do not want the sentence indication hearing to proceed on the assigned date;
- (c) Some counsel do advise the presiding judge that they are in a position to proceed on all charges, although not yet assigned on the latter charges;
- (d) That judges generally do not make objection that counsel is not authorised to appear on the other charges;
- (e) Some counsel consider that whether or not they are assigned on all charges is not relevant to the presiding judge and should proceed if they are in a position to do so;
- (f) Some judges take the position that they do not need to know or want to know that counsel is assigned on Legal Aid, it being sufficient for the judge to be advised that they are acting for the defendant; and

- (g) Mr Allan's experience is that it is not common for a judge to take the position that counsel is not authorised to appear because he had not yet been assigned on all charges.

[51] Mr Knight's final submission was that the submissions made by the applicant do not reflect the daily reality of practice at the criminal bar, are unduly harsh and legalistic.

[52] The Tribunal finds that there is force in the submission made on behalf of Mr Allan. We find that his conduct in dealing with the charges against Mr W was not a departure from acceptable practice in the circumstances that existed at the time. We considered that his conduct in this matter was not wilful or reckless or unsatisfactory. We dismissed the charge.

Summary

[53] We have dismissed charges 1 and 7. We have found Mr Allan guilty of unsatisfactory conduct in respect of charge 5. We have recorded that Mr Allan has admitted unsatisfactory conduct in respect of charges 2, 3, 4 and 6. We have found those admissions to be acceptable.

[54] The applicant is to make submissions regarding penalty within 14 days of the date of this decision. The respondent is to respond within a further 14 days.

[55] The Tribunal will consider penalty on the papers unless either of counsel request a hearing.

DATED at AUCKLAND this 13th day of September 2019

Judge B J Kendall
Chair

CHARGES

The Canterbury Westland Standards Committee (No 1) charges Phillip Allan (**Mr Allan**) of Christchurch with seven disciplinary offences:

Charge 1 – O complaint;

Charge 2 – Failure to respond to O complaint;

Charge 3 – Z complaint;

Charge 4 – Failure to respond to Z complaint;

Charge 5 – J complaint;

Charge 6 – C complaint;

Charge 7 – W matter;

and in respect of each of the seven charges alleges:

Misconduct pursuant to section 241(a) and sections 7(1)(a)(i) and/or (ii) of the Lawyers and Conveyancers Act 2006 (**the Act**);

or in the alternative:

Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct, pursuant to section 241(b) and sections 12(a), (b) and/or (c) of the Act;

or in the alternative:

Negligence or incompetence in his professional capacity, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charges are as follows:

BACKGROUND

- 1 Mr Allan was, at all relevant times, a barrister practising on his own account.
- 2 The conduct in question spans the period 2013 to 2018 and relates to clients assigned to Mr Allan under Legal Aid grants.

CHARGE 1 – O complaint

Background

- 3 In 2017 Mr Allan was assigned by Legal Aid to act for A O (**Ms O**).
- 4 Following Mr Allan being assigned, further charges were filed against Ms O. Mr Allan was not initially assigned to these new charges.

- 5 Between October 2017 and 5 December 2017 Ms O attempted to contact Mr Allan via text messages and telephone calls, leaving several voicemail messages regarding her upcoming Court date. Mr Allan failed to respond to these attempts at contact.
- 6 Ms O made an initial complaint to the New Zealand Law Society (**the Law Society**) on 13 November 2017 relating to Mr Allan's lack of response. Mr Allan was advised of the complaint by letter dated 11 December 2017.
- 7 After receiving notification of the complaint, Mr Allan met with Ms O on 14 December 2017 and obtained written instructions to continue to act for her.
- 8 Between 14 December 2017 and a subsequent Court appearance on 4 April 2018, Mr Allan continued to be unresponsive, difficult to contact and provided little information to Ms O regarding the progress of her Court proceedings.

Summary of breaches – charge 1

- 9 In respect of the conduct detailed at paragraphs 3 to 8, Mr Allan acted in breach of the following provisions of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**the CCCR**):
 - (a) Rule 3.2, which relates to responding to inquiries from the client in a timely manner;
 - (b) Rule 7.1, which relates to taking reasonable steps to ensure the client understands the nature of the retainer and keeping the client informed about progress on the retainer; and/or
 - (c) Rule 7.2, which relates to promptly answering requests for information or other inquiries from the client.
- 10 Mr Allan acted wilfully or recklessly in breach of the requirements noted at paragraph 9.

CHARGE 2 – Failure to promptly respond to the O complaint

Background

- 11 Further to the background set out at paragraphs 3 to 8, Mr Allan failed to promptly respond to the complaint made to the Law Society by Ms O.
- 12 Ms O made an initial complaint to the Law Society against Mr Allan on 13 November 2017 (**the O complaint**).
- 13 Mr Allan was advised of the O complaint by letter dated 11 December 2017. The letter invited submissions in response by 15 January 2018.
- 14 On 14 December 2017 Mr Allan advised a Law Society representative by email that he had written instructions to continue acting for Ms O and that he would provide a formal response to the O complaint by 15 January 2018.
- 15 Mr Allan did not provide submissions by the January deadline, nor did he seek an extension.
- 16 On 26 January 2018 a Law Society representative followed up with Mr Allan by email having received no response to the O complaint. Mr Allan did not respond to the follow up email.
- 17 On 2 May 2018 the Canterbury Westland Standards Committee (No 1) (**the Committee**) resolved to conduct a hearing of the O complaint on the papers. Mr Allan was advised of this

by letter dated 16 May 2018 and was further advised that submissions in response were due by 1 June 2018.

- 18 Mr Allan did not provide submissions by the June deadline, nor did he seek an extension.
- 19 By letter dated 12 June 2018 Mr Allan was advised that the Committee had resolved:
- (a) to commence an own motion investigation relating (in part) to his failure to respond to the O complaint; and
 - (b) to require Mr Allan to attend the Committee's next meeting on 4 July 2018.
- 20 On 4 July 2018 Mr Allan provided a written response to the O complaint to the Committee. Mr Allan attended the Committee's meeting later that day.

Summary of breaches – charge 2

- 21 By failing to promptly respond to the O complaint, Mr Allan engaged in conduct that would reasonably be regarded by lawyers of good standing as disgraceful, dishonourable and/or unacceptable.
- 22 Such conduct also constitutes a breach of:
- (a) Rule 10 of the CCCR, which requires a lawyer to maintain proper standards of professionalism in the lawyer's dealings; and/or
 - (b) Rule 11 of the CCCR, which requires that a lawyer's practice be administered in a manner that ensures the reputation of the legal profession is preserved.
- 23 Mr Allan acted wilfully or recklessly in breach of the requirements noted at paragraph 22.

CHARGE 3 – Z Complaint

Background

- 24 In or around 2017, Mr Allan was assigned by Legal Aid to act for P D (**Mr D**). In November 2017 Mr D's was reassigned to M Z (**Mr Z**).
- 25 On 20 November 2017 Mr Z emailed Mr Allan requesting a copy of the disclosure and formal statements Mr Allan had for Mr D's jury trial matter (**the requested documents**).
- 26 Mr Allan responded to Mr Z's email on 21 November 2017 stating the requested documents would be in the mail on 22 November 2017.
- 27 On 25 January 2018 Mr Z notified Mr Allan by email that the requested documents had not been received. Mr Z also noted that Mr D had advised that he had provided information relevant to his trial defence to Mr Allan. Mr Z urgently sought the file and requested documents from Mr Allan.
- 28 On 7 February 2018 Mr Z wrote Mr Allan to say the trial date was fast approaching and explaining that if Mr Allan did not send the file and requested documents by 14 February 2018, Mr Z would make a complaint to the Law Society.
- 29 Mr Allan did not respond to the emails sent on 25 January 2018 and 7 February 2018.

30 On 16 February 2018 Mr Z submitted a written complaint to the Law Society regarding Mr Allan's failure to provide the file and the requested documents. Mr Allan was advised of the complaint by letter dated 22 February 2018.

31 On 30 June 2018 Mr Allan sent Mr Ds file to Mr Z.

Summary of breaches – charge 3

32 In failing to provide the file and requested documents to Mr Z within a reasonable period, Mr Allan acted in breach of Rule 4.4.1 of the CCCR which requires a lawyer to act upon any written request to uplift documents without undue delay.

33 Mr Allan acted wilfully or recklessly in breach of Rule 4.4.1.

CHARGE 4 – Failure to promptly respond to the Z complaint

Background

34 Further to the background set out at paragraphs 24 to 31, Mr Allan failed to promptly respond to the complaint made to the Law Society by Mr Z.

35 Mr Z made a complaint to the Law Society against Mr Allan on 16 February 2018 (**the Z complaint**).

36 Mr Allan was advised of the Z complaint by letter dated 22 February 2018. The letter invited submissions in response by 9 March 2018.

37 Mr Allan did not provide submissions by the March deadline, nor did he seek an extension.

38 On 2 May 2018 the Committee resolved to conduct a hearing of the Z complaint on the papers. Mr Allan was advised of this by letter dated 16 May 2018 and was further advised that submissions in response were due by 1 June 2018.

39 Mr Allan did not provide submissions by the June deadline, nor did he seek an extension.

40 By letter dated 12 June 2018 Mr Allan was advised that the Committee had resolved:

(a) to commence an own motion investigation relating (in part) to his failure to respond to the Z complaint; and

(b) to require Mr Allan to attend the Committee's next meeting on 4 July 2018.

41 On 4 July 2018 Mr Allan provided a written response to the Z complaint to the Committee. Mr Allan attended the Committee's meeting later that day.

Summary of breaches – charge 4

42 By failing to promptly respond to the Z complaint, Mr Allan engaged in conduct that would reasonably be regarded by lawyers of good standing as disgraceful, dishonourable and/or unacceptable.

43 Such conduct also constitutes a breach of:

(a) Rule 10 of the CCCR, which requires a lawyer to maintain proper standards of professionalism in the lawyer's dealings; and/or

- (b) Rule 11 of the CCCR, which requires that a lawyer's practice be administered in a manner that ensures the reputation of the legal profession is preserved.

44 Mr Allan acted wilfully or recklessly in breach of the requirements noted at paragraph 43.

CHARGE 5 – J Complaint

Background

- 45 In April 2012 Mr Allan commenced acting for M J (**Ms J**) on a Legal Aid grant.
- 46 On 18 September 2013 Mr Allan represented Ms J at a hearing in the High Court. Ms J and her partner, P R (**Mr R**) were both defendants in the proceeding.
- 47 By Judgment dated 19 September 2013, Panckhurst J found in favour of Ms J and dismissed the claim against her (**the Judgment**). The Judgment provided that costs were reserved and that memoranda may be filed.
- 48 For several months following the Judgment being issued, Ms J and Mr R made various attempts to contact Mr Allan regarding the issues of costs. This included several visits to Mr Allan's chambers and multiple phone calls and emails. Mr Allan did not respond substantively to any of the attempts to make contact.
- 49 In May 2015 Ms J received correspondence from Legal Aid in relation to her debt owing.
- 50 On 3 June 2015 Ms J received a letter from Legal Aid advising that they had taken a statutory land charge over Ms J's residential property which would remain until the debt was repaid.
- 51 In June 2015 Mr R went to the High Court to inquire about costs in relation to the Hearing. After determining that no decision had been made regarding costs following the Judgment, a member of the Registry staff referred the file to another Judge.
- 52 On 6 July 2015, having considered the matter on the papers, Mander J issued a judgment awarding costs totalling \$14,129.10 to Ms J.
- 53 On 7 July 2015 a letter was sent from Legal Aid to Mr Allan and to Ms J about the Legal Aid debt, requesting that Mr Allan prepare a deed of assignment for the amount of costs awarded to Ms J.
- 54 Mr Allan did not contact Ms J in relation to the deed of assignment or take any steps in relation to it.
- 55 Ms J attempted to make contact with Mr Allan regarding the deed of assignment but was unable to do so.

Summary of breaches – charge 5

- 56 In respect of the conduct detailed at paragraphs 45 to 55, in his lack of communication with Ms J Mr Allan acted in breach of:
- (a) Rule 3.2 of the CCCR, which relates to responding to inquiries from the client in a timely manner;
- (b) Rule 7.1 of the CCCR, which relates to taking reasonable steps to ensure the client understands the nature of the retainer, keeping the client informed about progress on

the retainer, and consulting the client about steps taken to implement the client's instructions;

- (c) Rule 7.2 of the CCCR, which relates to promptly answering requests for information or other inquiries from the client; and
- (d) Rule 7.6 of the CCCR, which relates to the completion of a matter and the need to identify any necessary future action by the client or the lawyer.

57 Mr Allan acted wilfully or recklessly in breach of the requirements noted at paragraph 56.

58 In respect of the conduct detailed at paragraphs 45 to 55, in his failure to advance the issue of costs (including the deed of assignment), Mr Allan acted in breach of Rule 3 of the CCCR, which requires a lawyer to act competently, in a timely manner and to take reasonable care.

59 Mr Allan acted wilfully or recklessly in breach of the requirement noted at paragraph 58.

CHARGE 6 – C complaint

Background

60 In May 2018 Mr Allan represented C B (**Mr B**) in a jury trial where he was convicted of 33 charges for sexual offending against two complainants.

61 L C was instructed to represent Mr B at sentencing and to conduct a review of the case for possible appeal grounds.

62 In early July 2018 Mr C requested the file from Mr Allan via telephone message. This was followed by a formal written request by letter dated 11 July 2018 specifying the documents required (**the requested documents**).

63 Mr Allan failed to provide the requested documents for a period of approximately two months, despite numerous emails from Mr C reminding him of the urgency as an appeal needed to be filed by 31 August 2018.

64 A file was provided to Mr C by Mr Allan in late August or early September 2018. This file comprised the Crown disclosure but did not include any notes of preparation, pre-trial applications or briefs of evidence prepared by Mr Allan.

Summary of breaches – charge 6

65 In failing to provide the requested documents to Mr C within a reasonable period, Mr Allan breached Rule 4.4.1 of the CCCR which requires a lawyer to act upon any written request to uplift documents without undue delay.

66 Mr Allan acted wilfully or recklessly in breach of Rule 4.4.1.

CHARGE 7 – W matter

Background

67 In July and August 2018, Mr Allan was acting on a Legal Aid assignment for J W (**Mr W**).

68 Mr W was in custody facing twelve charges, eight in relation to offences occurring in Christchurch and four that were filed in Dunedin.

- 69 On 20 July 2018 Mr Allan appeared for Mr W in the Christchurch District Court and sought a sentence indication on all charges. Judge Callaghan granted the request for a sentence indication, scheduled a hearing for 20 August 2018 (with a one hour estimate given the number and complexity of the charges), and directed that submissions by both parties be filed and exchanged prior to the hearing.
- 70 Mr Allan did not inform the Judge on 20 July 2018 that he was not assigned to act for Mr W on the four Dunedin charges. He conveyed the impression to the Judge that he was acting on the Dunedin charges and was therefore authorised to seek a sentence indication on all charges.
- 71 Comprehensive submissions for the Police were filed on 14 August 2018 and served on Mr Allan.
- 72 Mr Allan failed to file and serve submissions other than a brief memorandum on the morning of the hearing (20 August 2018).
- 73 At the hearing on 20 August 2018 Mr Allan advised the presiding Judge that:
- (a) He was not assigned as counsel on the Dunedin matters;
 - (b) That was the reason he had not filed submissions;
 - (c) He had made a request to the Legal Services Agency to be assigned on all matters but had not heard back. He had not followed up on the request by letter, email or telephone; and
 - (d) He ought to have advised the Court at the time submissions were due that none would be filed and could offer no reason for not doing so.
- 74 As a result of Mr Allan's conduct:
- (a) Mr W had remained in custody without any progress being made toward the resolution of the charges against him; and
 - (b) The scheduled Court and judicial time was not properly utilised.

Summary of breaches – charge 7

- 75 In respect of the conduct detailed at paragraphs 67 to 74, Mr Allan acted in breach of:
- (a) Rule 3 of the CCCR, which requires a lawyer to act competently, in a timely manner and to take reasonable care;
 - (b) Rule 13, which provides that the overriding duty of a lawyer acting in litigation is to the Court concerned;
 - (c) Rule 13.1, which provides that a lawyer must not mislead the Court; and/or
 - (d) Rule 13.2, which provides that a lawyer must not act in a way that undermines the processes of the Court or the dignity of the Judiciary.
- 76 Mr Allan acted wilfully or recklessly in breach of the requirements noted at paragraph 75.